

NTSB Order No. EA-4431

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 22nd day of February, 1996

Docket SE-14156

appeal, to which the Administrator has filed a reply in opposition, will be denied.

In his June 30, 1995 Order of Revocation (the complaint here), the Administrator determined that respondent's February 4, 1994 federal court conviction, for the crime of unlawful growing and distribution of a controlled substance (marijuana), demonstrated that he lacked the care, judgment, and responsibility required of a certificate holder.³ Respondent, currently incarcerated pursuant to that drug conviction, did not, in his answer to the complaint, deny any of the Administrator's allegations. Rather, he essentially took the position, which the law judge in his decision found unavailing, that the revocation of his airman certificate amounted to a second punishment for the drug offense on which the Administrator's action was predicated.

The revocation was therefore prohibited, the respondent contended, by the Double Jeopardy Clause. We find no error in the law judge's ruling on this contention, which is respondent's
(..continued)

§61.15 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marihuana, or depressant or stimulant drugs is grounds for --

* * *

(2) Suspension or revocation of any certificate or rating issued under this part.

³The Court sentenced respondent on the felony conviction to a 60-month term of imprisonment, to be followed by a four-year term of supervised release (parole). United States v. Guslander, No. CR 93-27-M-CCL, D.Mont., judgment filed February 7, 1994.

sole argument on this appeal.

Consistent with the Board's view that the sanction of revocation is remedial, not punitive, it has repeatedly rejected the argument that the Fifth Amendment to the U.S. Constitution precludes a revocation based on a drug conviction for which the airman has been punished in the courts. See, e.g., Administrator v. Cole, NTSB Order No. EA-4418 (1996); Administrator v. Berryhill, NTSB Order No. EA-4414 at 3, n. 4 (1996), and cases there cited; and Administrator v. Manning, NTSB Order No. EA-4363 (1995). No reason appears in respondent's brief for not following that precedent here.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied, and
2. The decision of the law judge and the Administrator's order of revocation are affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT and GOGLIA, Members of the Board, concurred in the above opinion and order.